

1                                   BEFORE THE  
2                                   POLLUTION CONTROL HEARINGS BOARD  
                                  STATE OF WASHINGTON

3   IN THE MATTER OF               )  
4   ROBERT GENE RYLIE,            )  
                                  )  
5                   Appellant,     )  
                                  )  
6               vs.                 )  
                                  )  
7   STATE OF WASHINGTON,          )  
   DEPARTMENT OF ECOLOGY,        )  
                                  )  
8                   Respondent.    )  
                                  )  
9   \_\_\_\_\_

PCHB No. 315

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

10       This matter, the appeal of the cancellation of a water permit, came  
11 before the Pollution Control Hearings Board (Walt Woodward, presiding  
12 officer) at an informal hearing in the Washington Commerce Building,  
13 Seattle at 10:00 a.m., August 23, 1973.

14       Appellant appeared pro se; respondent through Wick Dufford,  
15 Assistant Attorney General. Shirley Marshall, Seattle court reporter,  
16 recorded the proceedings.

17       Witnesses were sworn and testified. Exhibits were admitted.  
18 Closing arguments were made.

1 From testimony heard, exhibits examined, arguments considered and  
2 transcript reviewed, the Pollution Control Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 Appellant owns about 0.8 acre of porous waterfront land on a steep  
6 slope on the west side of Kitsap Lake, located a few miles west of  
7 Bremerton in Kitsap County. He has thirty fruit trees, a vegetable  
8 garden and a large expanse of lawn on the property.

9 II.

10 On February 5, 1969 appellant filed an application (No. 21426) with  
11 the State Department of Water Resources, respondent's predecessor agency,  
12 for the right to withdraw 0.05 cubic feet per second (cfs) of water from  
13 Kitsap Lake for irrigation and fire protection. Respondent followed its  
14 normal procedures in processing such an application, including a field  
15 examination.

16 III.

17 On May 5, 1969 respondent's predecessor agency wrote appellant  
18 regarding the findings it was making on the application but appellant  
19 does not recall receiving said findings. However, appellant does recall  
20 receiving the May 5, 1969 letter which advised him of his right to appeal  
21 within thirty days if aggrieved with the agency's order.

22 IV.

23 On June 19, 1969, respondent's predecessor agency issued to  
24 appellant Surface Water Permit No. 15687 to withdraw 0.01 cfs from Kitsap  
25 Lake for irrigation each year from May 1 to October 1 to a total of 2  
26 acre-feet per year and "as needed" for fire protection. This permit

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 provided that construction on the water withdrawal system be commenced by  
2 July 1, 1970 and be completed by July 1, 1971 and warned that the permit  
3 would be subject to cancellation if appellant did "fail to comply with  
4 the development schedule contained herein."

5 V.

6 On June 26, 1969 appellant, believing that the amount granted must  
7 have been a typographical error, wrote to respondent's predecessor  
8 agency asking it to "correct" its allowance of 0.01 cfs to the applied  
9 amount of 0.05 cfs. On June 30, 1969 respondent's predecessor agency  
10 replied in writing, enclosed a copy of its May 5, 1969 letter and the  
11 Report of Examination, stated that the quantity of water was reduced  
12 "in accordance with our standard allowances of water in Western  
13 Washington," and that the quantity could not be increased "at this time."

14 VI.

15 On July 26, 1971 respondent wrote to appellant that appellant had  
16 not filed a Notice of Completion of Construction, that appellant could  
17 file for a year's extension but that, if appellant did not reply within  
18 sixty days, the permit would be subject to cancellation. On October 20,  
19 1972 respondent sent a similar warning letter to appellant. Appellant,  
20 who had "given up" because of what he regarded as an insufficient  
21 amount of water in Permit No. 15687, ignored these warning notices.

22 VII.

23 On February 23, 1973 respondent issued an Order of Cancellation of  
24 Permit No. 15687. That Order is the subject of this appeal.

25 From those Findings of Fact, the Pollution Control Hearings Board  
26 comes to these

27 FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

CONCLUSIONS

I.

Ever since receiving Permit No. 15687 for a water withdrawal amount which was one-fifth of the rate he sought, appellant has had--and apparently still has--a fixation that the permitted amount was inadequate to irrigate his orchard, garden and lawn situated on a steep slope in porous soil. This very well may be so, but it is unfortunate that appellant did not avail himself of the appeal process, of which he was advised during the issuance of Permit No. 15687. Respondent cannot be condemned or ordered by this Board to make an "ad hoc" recision of its permit allowances. Respondent is not always correct in its permit findings, but there are prescribed procedures for the correction of those findings, including the appeals process. It is not respondent's fault that appellant "gave up" and did not seek an appeals hearing.

II.

This being so, this instant matter, technically being an appeal to respondent's cancellation of Permit No. 15687, is resolved quickly. Respondent sent to appellant by certified mail two official warnings that his permit would be cancelled if he did not respond within sixty day periods with information on the construction schedule required by Permit No. 15687. Appellant chose to ignore those warnings. Respondent, therefore, acted properly, in accordance with applicable statutes and reasonably in its Order of Cancellation of Permit of February 23, 1973.

THEREFORE, the Pollution Control Hearings Board issues this

ORDER

The appeal is denied and respondent's Order of Cancellation of FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

1 Permit is sustained.

2 DONE at Lacey, Washington this 28<sup>th</sup> day of Sept., 1973.

3 POLLUTION CONTROL HEARINGS BOARD

4 Walt Woodward  
5 WALT WOODWARD, Chairman

6 W. A. Gissberg  
7 W. A. GISSBERG, Member  
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FINDINGS OF FACT,  
CONCLUSIONS AND ORDER